at all. Time has run out on them not because of the delay on the part of the trial judge in giving them a certificate but because they have taken the wrong view of the law. In this connection I respectfully agree with the judgment of Thomson J. (as he then was) in *John Puddicombe Wilkins & 2 Others v. John Patrick Kenelm Wilkins & Another*[3] where he said:—

"If it is out of time, then it is out of time for the reason that a mistake has been made as to the law. It is clear from such report as is available of the proceedings of the Court of Appeal in the case of *D.C. Butler-Madden v. Krishnasamy*[4] that the decision in that case was based on the view that the principles relating to the exercise of discretion in this sort of matter as laid down by the English Court of Appeal in the case of *Re Coles and Ravenshear*[5] are applicable to this country. In that case it was held that a mistake in law on the part of the appellant's legal advisers was not sufficient ground for granting special leave to appeal under R.S.C. O. 58 r. 15 as it stood prior to 1909 which corresponds to the Court of Appeal Rules, 1948, r. 11 under which the present application is made.

The decision in *Butler-Madden's* case was followed by the Court of Appeal in the case of *Hendry v. de Cruz*[6] and was followed by Sir Harold Willan, C.J. in the case of *Manickam v. Tremelbye Rubber Company.*[7] I am aware that that last case could with little difficulty be distinguished from the present one but I do not rely on it. I rely on the principles of *Butler-Madden's* case and the case of *Hendry* v. *de Cruz.*

The latest available authority as to the scope of *Ravenshear's* case is to be found in the judgment of the Court of Appeal in the case of *Re Macadam (No. 2)*[8]."

On the facts and on the law the applicants cannot succeed in this application. I would dismiss it with costs.

Azmi L.P. concurred.

Application dismissed.

Solicitors: *Skrine & Co.; Ranjit, Thomas & Kula.*

CHAN SHI SHI v. ONG TIOW PENG

[F.C. (Azmi L.P., Suffian and Gill F.JJ.) September 26, 1969]

[Kuala Lumpur — Federal Court Civil Appeal No. X. 43 of 1968]

Practice and Procedure — Appeal — Filing and serving record of — Appeal filed and served on last day — Differences in court holiday in different States — Whether service within time — Whether cross-appeal within time — Federal Court (Civil Appeals) (Transitional) Rules, 1963, rr. 6(1), 9(1), 13, 18 & 19(1), (4), (6) — R.S.C. 1957 O. 63 r. 3, O. 64 r. 11, O. 71 r. 1.

The appellant appealed against a judgment of the High Court at Muar and the respondent cross-appealed. The judgment appealed from was delivered on April 29, 1964 but the grounds of judgment were not delivered to the appellant until July 4, 1968. The appellant filed his notice of appeal in the High Court at Muar on May 25, 1968 and a copy of it was served on the respondent. An entry of appeal was thereupon made both in the Registry of the High Court at Muar and the Registry of the Federal Court at Kuala Lumpur. The appellant was required to file a memorandum of appeal within six weeks after the entry of the appeal which meant that the last day for filing the record of appeal was July 6, 1968 which was a Saturday. The record of appeal was filed on July 6, 1968 at the High Court in Muar and a copy of the record was delivered to the respondent's solicitors in Malacca at 12.30 p.m. on the same day. The respondent contended that (a) as Saturday July 6, 1968 was the day preceding the weekly holiday on Sunday in Malacca, the record of appeal should have been served on him before twelve o'clock noon on that day as required by Order 63 rule 3 of the R.S.C. 1957 and therefore the appeal could not be said to have been properly brought before the court and (b) if it was, then the notice of cross-appeal and the filing of the required number of copies in the appropriate Registry was within time although it was not done until July 18, 1968 that is within the 10 day period set out in rule 9(1) of the Federal Court (Civil Appeals) (Transitional) Rules, 1965.

Held: (1) the record of appeal was filed and served well within time. The matter must be decided by reference to the filing hours of the Registry of the High Court at which the documents are required to be filed and the address of service is wholly immaterial so long as service on the respondent was effected within time up to which the filing of the document in the appropriate Registry is permitted;

(2) there would be substance to the respondent's contention only if all the documents in relation to the appeal were required to be filed in the Registry of the High Court at Malacca. As this was not the case that contention cannot stand.

Case referred to:—

(1) *Tan Ting Kok* v. *Cheong Lep Keen & Anor.* [1969] 1 M.L.J. 153.

FEDERAL COURT

W.H. Sault for the appellant.

H.B. Ball for the respondent.

Cur. Adv. Vult.

Gill F.J.: This is an appeal against a judgment of the High Court at Muar by the plaintiff in the action in that court, and there is a cross-appeal by the defendant. The defendant as the respondent to the appeal has taken the preliminary point that the memorandum of appeal by the plaintiff was not served on him within the period prescribed by the relevant rules of court, and the plaintiff as the appellant says that the notice of cross-appeal was similarly delivered to him out of time.

The judgment appealed from was delivered on the 29th day of April, 1964, although a copy of the grounds of judgment by the learned trial judge was not delivered to the appellant until the 4th July, 1968. As required by rules 6(1), 13 and 18(1) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 a notice of appeal by the plaintiff was filed in the Registry of the High Court at Muar on 25th May, 1968, and a copy of it was served on the respondent as required by rule 7 of the same Rules. An

entry of appeal was thereupon made both in the Registry of the High Court at Muar and the Registry of the Federal Court at Kuala Lumpur in accordance with sub-rules (2), (3) and (4) of rule 18 of the said Rules. Needless to say, the notice of appeal was filed and served on the respondent well within time.

The appellant was required to file a memorandum of appeal as defined in rule 19(1) and copies of documents as mentioned in rule 19(4), together called the record of appeal, within six weeks after the entry of the appeal, as laid down in rule 19(6). It is common ground that the last day for the filing of such record of appeal was the 6th day of July, 1968, which was a Saturday.

The weekly holiday in Muar under the Holidays Ordinance, 1951 being a Friday, Saturday was a full working day there, so that under Order 63, rule 3 of the Rules of the Supreme Court, 1957 the appellant was at liberty to file his record of appeal in the Registry of the High Court at Muar until half-past three o'clock in the afternoon and to serve on the respondent before that hour a copy of such record under rule 19(8) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 and Order 64, rule 11 of the Rules of the Supreme Court, 1957 which reads as follows:—

"11. Service of pleadings, notices, summonses, orders, rules and other proceedings, shall be effected before the hour of half-past three in the afternoon, except on days preceding weekly holidays when it shall be effected before the hour of twelve noon. Services effected after half-past three in the afternoon on any week-day except the day preceding a weekly holiday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after twelve noon on a day preceding a weekly holiday shall for the like purpose be deemed to have been effected on the day following the weekly holiday."

It is to be observed that under Order 71, rule 1 of the Rules of the Supreme Court, 1957 "weekly holiday" has the same meaning as in the Holidays Ordinance, 1951.

The record of appeal was filed by the appellant's solicitors at Muar on 6th July, 1968, which, as I have said before, was the last day for the filing of the record and which was a Saturday, and a copy of the record was delivered to the respondent's solicitors in Malacca at 12.30 p.m. on the same day. The respondent contends that as Saturday, 6th July, 1968 was the day preceding the weekly holiday on Sunday in Malacca the record of appeal should have been served on him before twelve o'clock noon on that day as required by Order 63, rule 3 of the Rules of the Supreme Court, 1957 and that service effected on him after twelve noon on the day preceding the weekly holiday in Malacca must be deemed to have been effected on the day following the weekly holiday, namely, Monday, 8th July, 1968, by reason of the provisions of Order 64, rule 11, the terms of which have been set out above.

The respondent further contends on the authority of the recent decision of this court in *Tan Ting Kok v. Cheong Lep Keen & Anor*[1] that an appeal cannot be said to have been properly brought before the court and therefore cannot be proceeded with, unless the record of appeal is filed in the appropriate Registry and served on the opposite party within the prescribed period. That, of course, is perfectly true. The question, however, is whether the filing hours to be followed for the purpose of service of the record on the respondent should be those of the Registry of the High Court at which the record is required to be filed or of the Registry of the High Court in the State in which respondent or his solicitors reside or carry on business. In my judgment, this question must be determined by reference to the filing hours of the Registry of the High Court at which the document is required to be filed, and the address for service of the person to be served is wholly immaterial so long as service on him is effected within the time up to which the filing of the document in the appropriate Registry is permitted.

In the present case, the appellant was required to file his record of appeal at Muar not later than half-past three o'clock in the afternoon on 6th July, 1968, which he did. If the record of appeal was served on the respondent before that hour on that day, which was also done, irrespective of where he resided, the service was effected within the prescribed time. In my judgment, therefore, the record of appeal in this case was served within the period prescribed by the rules, so that the appeal has been properly brought before this court and can be proceeded with.

As regards a cross-appeal, a respondent is required by rule 9(1) of the Federal Court (Civil Appeals) (Transitional) Rules, 1963 to give notice of it and to file a copy of such notice, accompanied by copies thereof for the use of each of the judges of the court, not more than ten days after the service on him of the record of appeal. In the present case, the record of appeal was served on the respondent on 6th July, 1968. He should have therefore given notice of his cross-appeal and filed the required number of copies of such notices in the appropriate Registry not later than 16th July, 1968. But this was not done until 18th July.

It is argued for the respondent that even if the record of appeal was served on him within the stipulated period, service of it must be deemed to have been effected on Monday, 8th

July, 1968 by reason of the provisions of Order 64, rule 11, so that he was entitled to bring in his cross-appeal not later than 18th July. I regret that I cannot accept that argument. There would be substance in that argument only if all the documents in relation to this appeal were required to be filed in the Registry of the High Court at Malacca. I must therefore hold that the notice of cross-appeal by the respondent was filed and served out of time, with the result that the cross-appeal is not properly before this court. However, as this would appear to be the first time that this point has been argued, and in view of the peculiar circumstances of this appeal, I would extend the time until 18th July, 1968 for the filing and service of the notice of cross-appeal, so that both the appeal and the cross-appeal can be proceeded with.

Azmi L.P. and Suffian F.J. concurred.

Order accordingly.

Solicitors: *Sault, Keith Sellar & Co.; Allen, Gledhill & Ball.*

SOO KUA v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) September 26, 1969]
[Malacca — Criminal Appeal No. 25 of 1968]

Internal Security — Detention — Extension of period of — Direction of Yang di-Pertuan Agong — How signified — Validity of order issued by Minister — Internal Security Act, 1960, ss. 8(1), (1A) & 44.

The appellant was convicted under section 44 of the Internal Security Act, 1960 for breach of a condition of an order made by the Minister of Internal Affairs. It appeared that the order purported to be made by the Minister was "in exercise of the powers conferred upon me by section 8(1A) of the Internal Security Act, 1960".

Held, allowing the appeal: an order for the extension of a period of detention under section 8(1A) of the Internal Security Act can only be made in the discretion of the Yang di-Pertuan Agong and as the order in this case was not an order made by or at the direction of the Yang di-Pertuan Agong it was not an effective order.

Case referred to:—

(1) *Lim Hock Siew & Ors.* v. *The Minister of the Interior & Defence* [1968] 2 M.L.J. 219.

MAGISTRATE'S CRIMINAL APPEAL

V. Manuel for the appellant.

Hassan bin Ishak (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Sharma J.: The accused was charged under section 44 of the Internal Security Act 1960 for having committed a breach of one of the conditions of the order made by the Menteri Hal Ehwal Dalam Negeri* on the 22nd day of December 1966. The condition of the order the breach which was relied upon by the prosecution reads as follows:—

"That he shall reside and remain within the area of Jasin Police District and shall not leave or move out of Jasin Police District without the prior permission in writing of the officer in charge of Jasin Police District."

On the 3rd day of June, 1967 the accused was found walking in the town of Malacca and was arrested. He was convicted and sentenced to pay a fine of $400 or in default to undergo an imprisonment for 2 months. Against that order he has appealed. The only ground of appeal which has any substance is that the order made by the Minister is invalid.

Tht Minister as defined in the Internal Security Act 1960 (hereinafter referred to as the Act) is the Minister charged with responsibility for internal security.

Section 8(1) of the Act as far as is relevant provides as follows:—

"If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary so to do, the Minister shall make an order:

(a) directing that such person be detained for any period not exceeding two years; or

(b) for all or any of the following puposes, that is to say:

(i) for imposing upon that person such restrictions as may be specified in the order in respect of his activities and the places of his residence and employment; .....

(v) for prohibiting him from travelling beyond the limits of the Federation or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order:

and any order made under paragraph (b) of this subsection shall be for such period, not exceeding two years, as may be specified therein, and may by such order be required to be supported by a bond."

Under section 8(1) of the Act the Minister *is required* to make an order if the Yang di-Pertuan Agong is satisfied with the desirability of preventing a person or persons from acting in any manner prejudicial to the security of the country. The Minister is also under this section required to make the order if the Yang di-Pertuan Agong becomes satisfied that either the interests of public order or the maintenance of essential services warrant or indicate such an action.

Section 8(1) of the Act contemplates two steps or processes. The first is that the Yang di-Pertuan Agong has to be satisfied in the

* Minister of Internal Affairs.